

ORDINANCE NO. 2006-25-106

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, CREATING IN THE CITY CODE OF ORDINANCES, "STORMWATER MANAGEMENT" REGULATIONS; PROVIDING FOR PURPOSE; PROVIDING DEFINITIONS; ESTABLISHING A UTILITY; PROVIDING FOR A CUSTOMER BASE; PROVIDING FOR UTILITY FEE CATEGORIES AND FEE SCHEDULES; PROVIDING FOR EXEMPTIONS; ESTABLISHING AN ENTERPRISE FUND; PROVIDING FOR ADJUSTMENTS, APPEALS, ENFORCEMENT, AND PENALTIES; PROVIDING FOR COUNTY APPROVAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Gardens is currently part of the Miami-Dade County Stormwater Utility, and, as part of that Utility, Miami-Dade County is responsible for the maintenance of the City's Stormwater Management System ("SMS"), which includes, but is not limited to, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components as well as natural waterways and the secondary canal system and its rights-of-way, and

WHEREAS, by Resolution No. 2005-88-265, adopted June 20, 2005, the City of Miami Gardens has exercised its option to be exempt from the provisions of the Miami-Dade County Stormwater Utility, and

WHEREAS, Florida local governments have authority to establish a Stormwater Management Utility ("SMU") pursuant to the Home Rule Powers provided in the Florida Constitution and Chapter 163 and 166, Florida Statutes, in order to maintain and operate the SMS, and

WHEREAS, those elements of the City storm and surface water management system that provide for collection, storage, treatment, and conveyance of stormwater are a benefit to all of the citizens, residents, and property owners of the City of Miami Gardens, Florida, and

WHEREAS, through the creation of the City SMU, the City will become responsible for the ownership, maintenance, and expansion of the existing stormwater management system located within the City's limits for the purpose of collecting and disposing of storm and other surface water, and

WHEREAS, the City Council of the City of Miami Gardens finds that although each developed property in the City has varying degrees of water retention, all properties contribute to some extent to the City's stormwater drainage issues and that all citizens and property owners of the City will benefit from the establishment of a City SMU, and

WHEREAS, the cost of operating and maintaining the SMS and the financing of existing and future repairs, replacement, improvements, and extensions thereof should, to the extent practicable, be allocated in relationship to the contribution to the need for services, and

WHEREAS, the SMS requires scheduled maintenance, rehabilitation and replacement, and

WHEREAS, public health, safety, and welfare are adversely affected by poor water quality and flooding resulting from inadequate stormwater management practices, and

WHEREAS, use of the SMS is dependent on factors that influence runoff, including land use and impervious areas, and

WHEREAS, the fee structure contained in this Ordinance is a logical, reasonable, and rational basis and means for allocating the costs for a SMU to the several types of developed properties located within the City, and is based on the relative contribution of such developed properties to the need for the SMS, and

WHEREAS, the Florida legislature, through the adoption of Section 403.0893, Florida Statutes, specifically authorizes and encourages local governments to provide stormwater management services as a utility function for which service charges may be levied, and

WHEREAS, the Federal Clean Water Act (33 U.S.C. 1251 *et. seq.*) and implementing regulations, adopted by the Federal Environmental Protection Agency (EPA), requires permitting of the City's municipal separate stormwater system to ensure that minimum water quality standards are met, and

WHEREAS, the adoption of an SMU program will generate fees needed to implement the level of service (LOS) standards contained in the City Comprehensive Plan's Drainage Element and the Capital Improvement Element, adopted in conformance with the requirements of Chapter 163, Florida Statutes, and

WHEREAS, local natural resources features (such as waterways, lakes, mangroves, wetlands, and groundwater supplies) can be protected and enhanced as part of the SMU program, and

WHEREAS, the City Council of the City of Miami Gardens finds it to be in the best interest of the health, safety, and general welfare of the residents and citizens of the City to provide for a municipal stormwater management utility to maintain and operate the SMS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, THAT:

SECTION 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas Clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

SECTION 2. ESTABLISHMENT OF STORM WATER UTILITY: There is hereby established an Ordinance in the City of Miami Gardens called "Stormwater Management," as follows:

STORMWATER MANAGEMENT

Sec. 1. Purpose.

It is the purpose and intent of the city to create a municipal stormwater utility pursuant to Section 403.0893(1), Florida Statutes, as amended from time to time, and to establish stormwater utility fees to be levied against all developed property in the city in the amounts sufficient to plan, control, operate and maintain the City's Stormwater Management System pursuant to Section 403.0891(3), Florida Statutes.

Sec. 2. Construction.

This Ordinance shall be liberally construed to protect the public health, safety, and welfare, and to effectuate the purposes set forth herein.

Sec. 3. Definitions.

For purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(a) *Developed Property*: Real property within the city on which improvements have been made to foster commercial, residential or civic use, and/or any property on which impervious structures have been placed. For new construction, a property shall be considered developed for purposes of this Ordinance; (1) upon issuance of a certificate of occupancy or upon completion of construction or final inspection if no such certificate is issued; or (2) where construction is at least fifty percent (50%) complete and construction is halted for a period of three (3) months.

(b) *Equivalent Residential Unit ("ERU")*: The representative average impervious area of single-family residential property located in the city.

(c) *Impervious area*: Any part of any parcel of land that has been modified by the action of persons to reduce the land's natural ability to absorb and hold rainfall. This includes areas that have been cleared, graded, paved, graveled, or compacted, or covered with structures. Excluded are all lawns, landscape areas, and gardens or farming areas.

(d) *Manager*: The city manager or his or her designee.

(e) *Multi-family property*: All residential development not classified as single-family residential.

(f) *Nonresidential property*: All property not zoned or used as single-family or multi-family residential property as defined in this Ordinance.

(g) *Residential property*: Any later parcel developed exclusively for residential purposes, including but not limited to, single-family homes, manufactured homes, multi-family apartment buildings and condominiums, and transient rentals such as hotels and motels.

(h) *Single-family property*: All single-family detached residential dwelling structures. All other residential development shall be classified as multifamily.

(i) *SMU Director*: The designee of the city manager responsible for implementing the SMU function.

(j) *Stormwater*: That part of precipitation that travels over natural, altered, or improved surfaces to the nearest stream, canal, or channel or impoundment and may appear in surface waters.

(k) *Stormwater Management Plan*: An approved plan for receiving, handling, and transporting storm and surface waters within the city Stormwater Management System.

(l) *Stormwater Management System*: All natural and man-made elements used to convey stormwater from the first point of impact with the surface of the earth to a suitable outlet location internal or external to the boundaries of the city. The Stormwater Management System includes all pipes, channels, streams, canals, ditches, wetlands, sinkholes, detention/retention basins, ponds, secondary canals and their rights-of-way, and other stormwater conveyance and treatment facilities, whether public or private.

(m) *Undeveloped Property*: All real property within the city which does not meet the definition of developed property.

Sec. 3. Utility established.

(a) There is hereby created and established a Stormwater Management Utility (SMU) program, which shall provide the operational means of implementing and carrying out the functional requirements of the Stormwater Management System. The SMU program shall be part of the overall utility systems of the city.

(b) The governing body of the stormwater utility program shall be the City Council.

Sec. 4. Customer base.

All real property within the jurisdictional boundaries of the city shall be subject to SMU fees unless specifically exempted. The fees shall apply to all tax-exempt properties, including properties of federal, state, city, and county agencies and nonprofit organizations.

Sec. 5. Utility fee categories.

(a) SMU fees are established and amended as necessary to be sufficient to plan, construct, operate, and maintain the stormwater management system, as required by Section 403.0891(3), Florida Statutes. All lots and parcels subject to SMU fees in the City are divided into three (3) classes as follows;

(1) *Single-family Property*: Each single-family property shall be considered 1.0 ERU's for billing purposes.

(2) *Multifamily*: Each multifamily unit shall be considered as 0.6 ERU's for billing purposes.

(3) Houses of Worship classified by the Miami-Dade County Property Appraiser as land use type 71 shall be assessed a monthly utility fee which is fifty (50%) percent of the fee for nonresidential developed property calculated pursuant to Paragraph (a)(4) below.

(4) Nonresidential Property: The monthly utility fee for all nonresidential properties shall be billed and calculated in accordance with the following formula:

The value of one ERU for non-residential property is hereby determined to be 1,548 square feet of impervious area. (1,548 square feet of impervious area = 1.0 ERU).

In instances where multiple utility customers occupy a developed property, the city shall implement a rational and equitable proration related to the occupancy contained thereon for billing purposes.

The Utility Fee Shall = (Number of non-residential ERUs) x (rate per ERU)

A minimum value of one (1.0) ERU shall be assigned to each nonresidential property.

(b) For the purposes of calculating SMU fees, the calculation of ERUs is based upon property usage, as determined by the city and based on, but not limited by, state and county land use codes, occupational licenses, city land development regulations, and site inspections.

(c) The number of ERUs calculated for each account shall be rounded to the nearest one hundredth of a whole number.

Sec. 6. Fee schedule and payment.

- (a) The fee schedule shall be adopted by separate resolution to be amended by the City Council from time to time.
- (b) SMU fees shall be billed and collected as a separate line item on utility account bills. The City is authorized to utilize Miami-Dade County as an acceptable third party to perform billing services.
- (c) Bills for SMU fees shall be payable at the same time and in the same manner and subject to the penalties as provided in this Section II of this Ordinance.

(d) Separate accounts for stormwater utility services only may be established if other utilities are not furnished to the property.

(e) The owner of the property is ultimately responsible for all SMU fees imposed under this Article.

Sec. 7. Exemptions.

The following real property located in the city shall be exempt from the imposition of SMU fees:

- (a) Undeveloped property.
- (b) Paved or improved public rights-of-way.
- (c) Agriculture-classified properties under agriculture uses.

Sec. 8. Stormwater Utility Enterprise funds.

(a) An SMU Enterprise Fund (the "Fund") account, into which all revenues from SMU utility fees, connection charges, grants, or other funding sources shall be deposited and from which all expenditures related to the SMU shall be paid, is hereby established.

(b) Accounting and reporting procedures shall be consistent with Florida General Law. Expenditures from the Fund for activities that are not related to the city SMU shall not be permitted, except for a prorated charge for general government services as is in effect for other city utility operations.

(c) The monies within the fund shall be used for the exclusive use of the City's Stormwater Management Utility, including but not limited to the following;

- (1) Stormwater Management services, such as studies, design, permit review, planned preparation, and development review;
- (2) operation, maintenance, repair, and replacement of the stormwater collection, storage, treatment, and conveyance infrastructure;
- (3) project cost related to constructing major or minor structural improvements to the stormwater-related infrastructure as provided in any City Stormwater Management Plan;
- (4) administrative costs associated with the management of the SMU fee;

(5) debt service financing of stormwater-related capital improvements defined in any City stormwater management plan including City's pro rata share of the Miami-Dade County Stormwater Utility Revenue Bond Series 1999 and Series 2004;

(6) funding of any studies, including water quantity and quality monitoring aerial photography and geotechnical work associated with the planning of stormwater-related infrastructure.

Sec. 9. Request for Adjustment.

All requests for adjustment of the SMU fee shall be submitted to the SMU Director and shall be reviewed as follows:

(a) All requests shall be in writing and set forth in detail the grounds upon which an adjustment is sought. All requests shall be judged on the basis of the amount of impervious area on the lot or parcel, and/or additional or enhanced stormwater facility on or serving the lot or parcel. No credit shall be given for the installation of facilities required by county or city development codes or state stormwater regulations.

(b) Adjustment requests made during the first calendar year that the fee is imposed shall be reviewed by the SMU Director within a one-year period from the date of submission. Adjustments resulting from such requests shall be retroactive to the effective date of this Ordinance.

(c) All adjustment requests received after the first calendar year that the fee is imposed shall be reviewed by the SMU Director within a four (4) month period from the date of submission. Adjustments resulting from such requests shall be retroactive to the date of submission of the adjustment request, but shall not exceed one (1) year.

(d) The customer or property-owner requesting the adjustment may be required, at his own cost, to provide supplemental information to the SMU Director including but not limited to, facts, opinions, survey data, and engineering to substantiate customer's case. Failure to provide such information may result in a denial of the adjustment request.

(e) The SMU Director shall provide the person requesting the adjustment with a written determination of the request within the time provided herein. Any adjustments shall be prorated monthly.

Sec. 10. Appeal Process.

Any customer or property owner who disputes the result of a request made to the SMU Director for adjustment may petition in writing to the city manager for a review of said charges. The decision of the city manager shall be final.

Sec. 11. Enforcement and Penalties.

(a) Stormwater Utility Fees shall be payable when due and, if late, shall be subject to a ten (10%) percent late charge. Any unpaid balance for such fees and late charges shall be subject to an interest charge at the rate of eight (8%) per annum. Imposition of such interest charge shall commence sixty (60) days after the past due date of the fees set forth on the utility bill. Nonpayment of any portion of the Stormwater Utility fee shall be considered as nonpayment of all other utilities appearing on the bill and may result in the termination of all utility services appearing on the bill.

(b) All fees, late charge and interest accruing, thereupon due and owing to the utility which remain unpaid sixty (60) days after the past due date of the fees shall become a lien against and upon the developed property for which the fees are due and owing to the same extent and character as alien for a special assessment. Until fully paid and discharged, said fees, late charges, and interest accrued thereupon shall be, remain, and constitute a special assessment lien equal in rank and dignity with the lien of ad valorem taxes and superior in rank and dignity to all other liens, encumbrances, titles, and claims in, to or against the developed property involved for the period of five years from the date said fees, late charges, and interest accrued thereupon, become a lien as set forth in this chapter. Said lien may be enforced and satisfied by the City, on behalf of the SMU, pursuant to Chapter 173, Florida Statutes, as amended from time to time, or any other method permitted by law. The lien provided for herein shall not be deemed to be in lieu of any other legal remedies for recovery of said fee, late charges, and accrued interest available in the City and to the utility.

(1) Notice. For fees which become more than sixty (60) days past due and unpaid, the City or the SMU shall cause to be filed in the office of the Clerk of the Circuit Court of Miami-Dade County, Florida, a notice of lien or statement showing a legal description of the property against which the lien is claimed, its location by street and number, the name of the owner, and an accurate statement of the fees and late charges then unpaid. A copy of such notice of lien may be mailed within a reasonable time to the owner of the property involved as shown by the records of the tax collector of the county.

(2) Satisfaction. Liens may be discharged and satisfied by payment to the City, on behalf of the utility, of the aggregate amounts specified in the notice of lien, together with interest accrued thereon, and all filing and recording fees. When any such lien has been fully paid or discharged, the City shall cause evidence of the satisfaction and discharge of such lien to be filed with the Office of the Clerk of the Circuit Court of Miami-Dade County, Florida. Any person, firm, corporation, or other legal entity, other than the present owner of the property involved, who fully pays any such lien shall be entitled to an assignment of lien and shall be subrogated to the rights of the City and the utility with respect to the enforcement of such lien.

(3) Exemption to notice. Notwithstanding other provisions to the contrary herein, the City on behalf of the SMU shall have the discretion not to file notices of lien for fees, late charges, and interest accrued thereupon in an amount less than one hundred (\$100.00) dollars. If the City or the SMU elects not to file a notice of lien, said fees, late charges, and accrued interest shall remain as debts due and owing in accordance with the provisions of this ordinance.

(4) Certificates verifying amount of debt. The utility is authorized and directed to execute and deliver upon request written certificates certifying the amount of fees, late charges, and interest accrued thereupon, which are due and owing to the utility and the City, for any developed property which is subject to payment of said fees, or the utility may certify that no fees, late charges or accrued interest are due and owing. Said certificates shall be binding upon the City and the utility. Third party requests for Certificates may incur a reasonable charge based on administration and clerical time to research, produce and transmit said Certificates.

SECTION 3: EXEMPTION: Pursuant to Section 24-61.2 of the Code of Ordinances of Miami-Dade County, this Ordinance shall become effective immediately upon its passage and the granting of an exemption from the provisions of Article IV, Chapter 24 of the Code of Ordinances of Miami-Dade County.

SECTION 4: CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

SECTION 5. SEVERABILITY: If any section, subsection, sentence, clause,


phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the sections of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed; provided, however, that Section 1 hereof or the provisions contemplated thereby shall not be codified.

SECTION 7. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA ON FIRST READING THIS 2ND DAY OF NOVEMBER, 2006.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA ON SECOND AND FINAL READING THIS 13TH DAY OF DECEMBER, 2006.


Shirley Gibson, MAYOR

ATTEST:


Ronetta Taylor, CITY CLERK

APPROVED AS TO FORM:

Sonja K. Dickens, CITY ATTORNEY

SPONSORED BY: Dr. Danny O. Crew, City Manager

MOVED BY: Vice Mayor Braynon

SECONDED BY: Councilman Williams

VOTE: 7-0

Mayor Shirley Gibson	<u> x </u> (Yes)	<u> </u> (No)
Vice Mayor Oscar Braynon II	<u> x </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> x </u> (Yes)	<u> </u> (No)
Councilman Aaron Campbell Jr.	<u> x </u> (Yes)	<u> </u> (No)
Councilman André Williams	<u> x </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> x </u> (Yes)	<u> </u> (No)
Councilwoman Barbara Watson	<u> x </u> (Yes)	<u> </u> (No)



City of Miami Gardens

1515 NW 167th Street, Bldg. 5,
Suite 200
Miami Gardens, Florida 33169

Mayor Shirley Gibson
Vice Mayor Aaron Campbell
Councilman Melvin L. Bratton
Councilman Oscar Braynon II
Councilwoman Andres Williams
Councilwoman Sharon Pritchett
Councilwoman Barbara Watson

MEMORANDUM

**To: The Honorable Mayor &
City Council Members**

**From: Dr. Danny O. Crew
City Manager**

Date: December 11, 2006

**Re: Stormwater Billing Memorandum of Understanding with North
Miami Beach**

This Stormwater Memorandum of Understanding is with North Miami Beach to collect the stormwater fees in their utility bills for the City's portion. Since the City does not have a mechanism in place to collect the user fees from the residents and commercial properties, North Miami Beach will collect the City's stormwater utility's portion of the user fees and maintain records (to justify charges, expenses, and costs) for a fee of \$0.60 per quarterly bill for all accounts. The portion of the City that is being serviced by Miami Dade County will be collected by Miami Dade County Water and Sewer Department on a separate agreement.

Recommendation:

That the City Council approves the stormwater billing agreement with North Miami Beach.



CITY OF NORTH MIAMI BEACH

MEMORANDUM

TO: Danny O. Crew, City of Miami Gardens City Manager
Tom Ruiz, City of Miami Gardens Director of Public Works

FROM: Roslyn B. Weisblum, Associate Finance Director *R.W.*

DATE: December 8, 2006

RE: Stormwater Billing for the City of Miami Gardens

You have proposed that the City of North Miami Beach (NMB) bill stormwater utility on the water bills for City of Miami Gardens properties within NMB's water service area. In order to implement this project, the duties and responsibilities of the two municipalities consist of but are not limited to the following.

The City of Miami Gardens shall provide NMB with the following:

1. A copy of the City of Miami Gardens Stormwater Utility Ordinance, which creates a stormwater utility and authorizes collection of stormwater fees.
2. Database and/or printout containing the customers previously billed by DERM and the date of DERM's final billing.
3. Starting date when NMB will be billing these customers with reasonable time for implementation.
4. Applicable stormwater rate and number of square feet in one ERU (equivalent residential/runoff unit).
5. Number of units in each multi-unit building as confirmation of the units NMB is billing for water service.
6. Impervious areas of each commercial property as well as name and mailing address of the record property owner.
7. City of Miami Gardens telephone number, department, and contact person where customers can be directed for any questions regarding the fee.
8. Timely notice of any rate changes.
9. Notification when C.O.'s are issued for new development or building additions with information as to the number of residential units or impervious area.

In addition, The City of Miami Gardens shall notify the customers by letter of the changes that are taking place. Please provide NMB with a copy of this letter. Condominium Associations, in particular, should be informed as soon as possible, since DERM previously may have billed each unit owner separately whereas now the Condo Association would be billed for the total units.

The City of North Miami Beach shall perform the following:

1. Bill City of Miami Gardens properties that have C.O.'s and NMB water accounts for City of Miami Gardens Stormwater Utility.
 - a. Residential, multi-unit, and commercial properties will be billed to the person or entity that has contracted with NMB for water service.
 - b. Commercial properties with multiple tenants but one impervious area (ERU) will have the City of Miami Gardens stormwater utility billed to the property owner, not each individual tenant.
 - c. NMB will be under no obligation to bill properties that do not have water accounts. NMB could attempt to bill any properties that fall into this category, however, if collection should become difficult and accounts are delinquent for more than three billings, NMB would deduct the stormwater balance due from the remittance and have the City of Miami Gardens take over the billing and collection of those properties. Occasionally, NMB will similarly deduct other uncollectible stormwater amounts and provide the City of Miami Gardens with the details.
 - d. NMB will not bill stormwater for undeveloped property.
2. Remit payments to the City of Miami Gardens periodically (quarterly or monthly) on amounts billed.
3. Charge 5% for the billing, administration, and collection of the stormwater fee, which will be deducted from each remittance.
4. Charge a start-up fee (approximately \$2500) for the costs associated with initiating the stormwater utility billing, which will be deducted from the first remittance.
5. Periodically, furnish the City of Miami Gardens with printouts of customers and amounts billed, when so requested by the City of Miami Gardens finance or other departments.

Please be advised that time is of the essence in order to accomplish this project.

Cc: Keven Klopp, City of North Miami Beach City Manager
Marilyn Spencer, City of North Miami Beach Finance Director
Miriam Bonsinger, City of North Miami Beach Assistant City Attorney